

communications."^{53/} The Commission's findings are consistent with the Communications Act and should be affirmed.

22. Section 224(f) requires utilities to provide non-discriminatory access to poles, ducts, conduits, or rights-of-way owned or controlled by it. The Act defines a "utility" for purposes of Section 224 as "any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications."^{54/} The use of the phrase "in whole or in part" clearly envisions that the use of any of the utility's facilities for wire communications triggers the obligation to provide access to all facilities. Also, as the Commission noted, the phrase "any wire communications" is broad enough to encompass the internal communications of utilities.^{55/} This interpretation of the

^{53/} First Report ¶ 1174.

^{54/} 47 U.S.C. § 224(a)(1) (emphasis added).

^{55/} If the utilities' arguments are taken to their natural conclusion, a utility wanting to sell telecommunications services and shield its facilities from use by other telecommunications providers could do so by providing some limited internal communications on the facilities and selling the rest of its excess capacity to the public. This loophole is inconsistent with the public interest.

statutory language is consistent with the intent and purpose of the 1996 revisions to the Communications Act. Section 224(f) provides all telecommunications carriers additional options for facility placement. Increased facilities presence within the local marketplace serves to enhance competition in that market. This is especially true since the number of CMRS providers seeking site locations has skyrocketed with the licensing of the broadband PCS and narrowband PCS spectrum. Furthermore, there has been an increasing amount of opposition to new CMRS facilities. Therefore, the use of utility facilities may be necessary for the quick deployment of these services.

B. All Telecommunications Carriers Are Entitled to Non-Discriminatory Access Under Section 224(f)

23. A small number of utilities argue that the non-discriminatory access provisions of Section 224 do not apply to wireless equipment.^{56/} Contrary to the petitioners' contentions, the Commission's interpretation of Section 224 is consistent with the plain language and intent of the statute. Section 224(f) provides that non-discriminatory access must be provided to "a cable

^{56/} Request for Reconsideration and Rehearing of First Report and Order by Consolidated Edison Company of New York, Inc., pp. 11-12; and Florida Power and Light Company's Petition for Reconsideration and/or Clarification of the First Report and Order, pp. 24-26.

television system or any telecommunications carrier."^{57/}

In addition, the definition of pole attachment clearly contemplates attachment of any telecommunications equipment. Pole attachment is defined as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility."^{58/} Providers of wireless service, such as cellular and paging services provided by AirTouch, are included in the definition of telecommunications carriers, and provide telecommunications services, as those terms are defined in the Communications Act.^{59/} Thus, the language of the statute clearly indicates that the non-discriminatory access provisions of Section 224(f) apply to wireless carriers.

24. Applicability of the access provisions of Section 224(f) to wireless carriers also fosters the intent of Congress to increase competition in the local marketplace. By requiring a utility to provide access to its facilities to all telecommunications carriers once the

^{57/} 47 U.S.C. § 224(f)(1) (emphasis added).

^{58/} 47 U.S.C. § 224(a)(4) (emphasis added).

^{59/} Section 3(43) of the Act defines telecommunications as "the transmission, between or among points specified by the user, of information of the user's choosing..." 47 U.S.C. § 3(43).

utility has provided access for "wire communications" (i.e., to incumbent or competitive local exchange carriers),^{60/} the Commission has leveled the playing field on which telecommunications carriers have battled to achieve a competitive facilities-based presence in the local marketplace.

VI. Conclusion

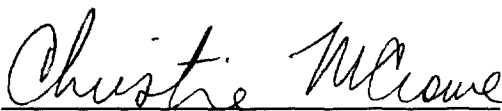
WHEREFORE, the foregoing premises having been duly considered, AirTouch respectfully requests that the

^{60/} 47 U.S.C. § 224(a)(1) in conjunction with 47 U.S.C. § 224(f)(1).

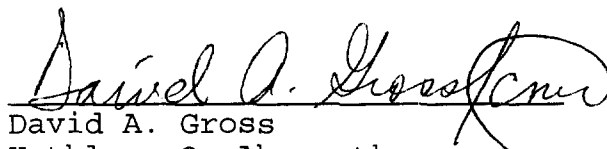
Commission reconsider or clarify its First Report in
accordance with the comments provided herein.

Respectfully submitted,

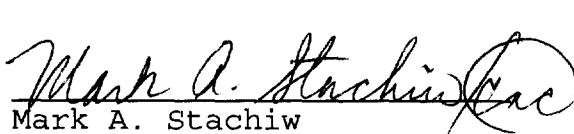
AIRTOUCH COMMUNICATIONS, INC.



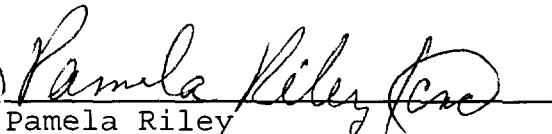
Carl W. Northrop
Christine M. Crowe
Paul, Hastings, Janofsky
& Walker LLP
1299 Pennsylvania Ave., NW
Tenth Floor
Washington, D.C. 20004
(202) 508-9500
Its Attorneys



David A. Gross
Kathleen Q. Abernathy
AirTouch Communications, Inc.
1818 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 293-3800



Mark A. Stachiw
Vice President, Senior
Counsel & Secretary
AirTouch Paging
Three Forest Plaza
12221 Merit Drive
Suite 800
Dallas, Texas 75251
(214) 860-3200



Pamela Riley
AirTouch Communications, Inc.
One California Street
San Francisco, CA 94111
(415) 658-2000

October 31, 1996

CERTIFICATE OF SERVICE

I, Yvette Omar, a secretary in the law firm of PAUL, HASTINGS, JANOFSKY & WALKER LLP, hereby certify that on the 31st day of October, 1996, copies of the foregoing "**Comments of AirTouch Communications, Inc. on Petitions for Reconsideration**" were sent, by first-class postage-prepaid U.S. mail, to the following:

Michael F. Altschul
Randall S. Coleman
Cellular Telecommunications Industry Association
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 230036-3384

Judith St. Ledger-Roty
Reed, Smith, Shaw & McClay
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005-3317
Counsel for Paging Network, Inc.

Leonard J. Kennedy
Laura H. Philips
Peter A. Batacan
Raymond G. Bender
J.G. Harrington
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
Counsel for Comcast Cellular Communications, Inc.
and Vanguard Cellular Systems, Inc.

Paul H. Kuzia
Arch Communications Group, Inc.
1800 West Park Drive
Suite 350
Westborough, MA 01581

Werner K. Hartenberger
Laura H. Philips
J.G. Harrington
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
Counsel for Cox Communications, Inc.

Anthony Marquez
First Assistance Attorney General
State of Colorado
1580 Logan Street; OL2
Denver, CO 80203
Counsel for Public Utilities Commission of the State
of Colorado

William F. Maher, Jr.
David Colton
Halprin, Temple, Goodman & Sugrue
1100 New York Avenue, N.W.
Suite 650 East
Washington, D.C. 20005
Counsel for Local Exchange Carrier Coalition

John D. McMahon
Mary L. Kraveske
4 Irving Place, Room 1815-S
New York, NY 10003
Counsel for the Consolidated Edison Company of New
York

Cheryl L. Parrino
Michael S. Varda
Public Service Commission of Wisconsin
P.O. Box 7854
Madison, WI 53707-7854

Shirley S. Fugimoto
Christine M. Gill
Thomas J. Navin
McDermott, Will & Emery
1850 K Street, N.W.; Suite 500
Washington, D.C. 20006
Counsel for Florida Power and Light Company


David W. Carpenter
David Lawson
Sidley & Austin
One First National Plaza
Chicago, IL 60603
Counsel for AT&T Corp.

Shirley S. Fugimoto
Christine M. Gill
Kris Anne Monteith
McDermott, Will & Emery
1850 K Street, N.W.; Suite 500
Washington, D.C. 20006
Counsel for American Electric Power Service Corp.
et. al.

Ralph Miller
General manager
Kalida Telephone Company, Inc.
121 E. Main Street, Box 267
Kalida, OH 45853

Richard J. Metzger
Emily M. Williams
Association for Local Telecommunications Services
1200 19th Street, N.W.; Suite 560
Washington, D.C. 20036

Walter Steimel, Jr.
Marjorie K. Conner
Hunton & Williams
1900 K Street, N.W.
Washington, D.C. 20006
Counsel to Pilgrim Telephone, Inc.



Yvette Omar